No. 223.

Def. of Gans for D. E. (on mo.)

223

FILED
MAR 16 1900
JAMES H. McKENNEY,
Clerk.

Filed Mar. 16, 1900.

IN THE

SUPREME COURT OF THE UNITED STATES.

BLANCHE I. HARRISON AND WALTER H. HARRISON, HER HUSBAND, *Plaintiffs in Error*,

vs.

FRANKLIN J. MORTON, *Defendant in Error.*

Answer of the Defendant in Error to the Motion of the Plaintiffs in Error, Filed on March 12, 1900, Asking for Additional Time within which to Print the Record Herein.

EDGAR H. GANS,
Solicitor for Defendant in Error

IN THE

SUPREME COURT OF THE UNITED STATES.

BLANCHE I. HARRISON AND WALTER H. HARRISON, HER HUSBAND, *Plaintiffs in Error*,

vs.

FRANKLIN J. MORTON, *Defendant in Error*.

Answer of the Defendant in Error to the Motion of the Plaintiffs in Error, Filed on March 12, 1900, Asking for Additional Time within which to Print the Record Herein.

The defendant in error desires to object to the granting of any extension of time for the printing of the Record in this cause, and asks leave of the Court to file this paper stating the grounds for such objection.

The defendant in error had no notice whatsoever that the motion of the plaintiff in error for an extension of the time for printing the Record was to be presented to this Court on Monday, March 12th, 1900. It is true that on or about March 9th, 1900, a copy of the motion was served on counsel for the defendant in error, but there was no notice as to when the motion would be submitted, and even if such notice had

been given on March 9th, 1900, there was not sufficient time allowed the defendant in error between that date and March 12th, 1900, to prepare and print an answer to said petition. The defendant in error therefore respectfully submits that he should be allowed to file this paper showing his objections to the granting of additional time for printing the Record. These objections are as follows:

I.

This is a case in which the plaintiffs in error are in possession of certain property, to wit, two dwelling houses in the city of Baltimore; the defendant in error is the holder of an equitable mortgage on each of said houses, and on Jan. 4, 1897, began proceedings to foreclose said mortgages. These proceedings have been delayed by the plaintiff in error for three years. During all this time the plaintiff in error has remained in possession of said houses, and the defendant in error has been paying all expenses thereon, including taxes, water rents, ground rents, etc.

II.

That the appeal bond which the plaintiff in error has given is worthless; that since the said bond was filed judgments have been rendered and are now outstanding and unsatisfied against both of the sureties thereon. Certified copies of these judgments are filed herewith.

III.

That it is manifest on the face of the Record transmitted to this Court that there is no federal question involved in this case. That the proceedings herein began with a bill of complaint filed in the Circuit Court for Baltimore City; that upon the filing of this bill a subpœna was issued for the defendants; that this subpœna was duly returned by the Sheriff of Baltimore City, with the endorsement, "*summoned ambo;*" that the sole contention of the plaintiffs in error is that they were not in fact summoned, and that therefore the

subsequent proceedings have the effect of depriving them of their property without due process of law. This contention was decided adversely to the plaintiffs in error both in the Circuit Court for Baltimore City and in the Court of Appeals of Maryland. This Court, we submit, will not go into a question of this kind. The constitutional provision is "nor shall any *State* deprive any person of life, liberty or property without due process of law." Certainly a State cannot be deemed guilty of a violation of this constitutional obligation simply because one of its Courts may have made an erroneous decision as to a question of fact. The State does its full duty when it passes a general law governing its Courts, and providing for due notice to the defendant in civil suits by personal service of a subpœna.

Arrowsmith vs. Harmoning, 118 U. S. 194.

There is no pretense that the laws of Maryland do not so provide, and therefore we submit that this case is one which in any event should not be entertained by this Court.

IV.

To allow the plaintiffs in error sixty days additional time in which to print the Record would simply be to carry the case over until the next term and allow said plaintiffs in error to occupy said property for several months at the expense of the defendant in error.

And as in duty,

EDGAR H. GANS,

Solicitor for Defendant in Error.